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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

MAILED

MAR 22 2010

OFFICE OF PETITIONS

In re Application of :
Dasseux et al. :
Application No. 10/596,047 : ON APPLICATION FOR
Filed: June 21, 2006 : PATENT TERM ADJUSTMENT
Attorney Docket No. PC20667 :
Title: KETONE COMPOUNDS AND :
COMPOSITIONS FOR CHOLESTEROL :
MANAGEMENT AND RELATED USES :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR §1.705(B)" filed June 26, 2009. Applicants submit that the correct patent term adjustment to be indicated on the patent is fourteen (14) days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

The request for review of the patent term adjustment is **Granted to the extent indicated.**

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

On March 31, 2009, the Office mailed the Determination of Patent Term Extension under 35 U.S.C. 154(b) in the above-identified application. The Notice stated the patent term adjustment to date is 0 days. Applicants dispute the calculation.

Applicants contend a 132 day adjustment is required for failure by the Office to mail at least one of the notifications under 35 U.S.C. 132 not later than fourteen months after the date on which the application fulfilled the requirements under 35 U.S.C. 371, pursuant to 37 CFR §1.702(a)(1). A restriction requirement was mailed on December 31, 2007, which applicants contend is 14 months and 132 days after the application fulfilled the requirements of 35 U.S.C. 371.

However, a review of the record shows that the requirements of 35 U.S.C. 371 were fulfilled on June 24, 2006. As early commencement was not requested, the last of 371 requirements to be completed was commencement at 30 months on June 24, 2006. Thus, the restriction requirement on December 31, 2007 was mailed 14 months and 129 days after fulfillment.

The total number of days of Office delay at the time of the mailing of the Notice of Allowance is 129 days.

Applicants also state that reductions in the amount of 88 and 30 days are required. A review of the record confirms applicants' statement. An 88-day and 30-day period for reduction should have been taken based upon 37 CFR §1.704(b). 37 CFR §1.704(b) provides:

an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

In the first instance the reply to the restriction requirement mailed December 31, 2007 was not received until June 27, 2008, three months and 88 days after the mailing of the restriction requirement.

In the second instance, a non-final Office action was mailed on September 30, 2008. A response was not filed until January 29, 2009. Pursuant to 37 CFR 1.704(b) the application is subject to 30 day reduction for applicant delay for the period beginning on December 31, 2008 and ending on January 29, 2009.

The total number of days of applicant delay at the time of the mailing of the Notice of Allowance is 118 (88+30) days.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 11 (129-118) days.

As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

¹ For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant, at (571) 272-3215.

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

Day : Saturday
Date: 3/20/2010

PALM INTRANET

Time: 13:45:36

PTE Calculations for Application: 10/596047

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|--------------------------|------------|-------------------------|----|
| Application Filing Date: | 06/21/2006 | PTO Delay (PTO): | 0 |
| Issue Date of Patent: | | Three Years: | 0 |
| Pre-Issue Petitions: | 0 | Applicant Delay (APPL): | 0 |
| Post-Issue Petitions: | 0 | Total PTE (days): | 11 |
| PTO Delay Adjustment: | 11 | | |

File Contents History

| Number | Date | Contents Description | PTO | APPL | START |
|--------|------------|---------------------------------------------------------------|-----|------|-------|
| 69 | 03/20/2010 | ADJUSTMENT OF PTA CALCULATION BY PTO | 129 | | |
| 68 | 03/20/2010 | ADJUSTMENT OF PTA CALCULATION BY PTO | | 88 | |
| 67 | 03/20/2010 | ADJUSTMENT OF PTA CALCULATION BY PTO | | 30 | |
| 51 | 03/31/2009 | MAIL NOTICE OF ALLOWANCE | | | |
| 50 | 03/28/2009 | ISSUE REVISION COMPLETED | | | |
| 49 | 03/27/2009 | ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING | | | |
| 48 | 03/27/2008 | DOCUMENT VERIFICATION | | | |
| 47 | 03/27/2009 | NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED | | | |
| 46 | 03/27/2009 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 45 | 03/25/2009 | EXAMINER'S AMENDMENT COMMUNICATION | | | |
| 44 | 03/25/2009 | NOTICE OF ALLOWABILITY | | | |
| 43 | 01/29/2009 | INFORMATION DISCLOSURE STATEMENT CONSIDERED | | | |
| 42 | 02/13/2009 | MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413) | | | |
| 41 | 02/10/2009 | EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413) | | | |
| 40 | 02/05/2009 | DATE FORWARDED TO EXAMINER | | | |
| 39 | 01/29/2009 | RESPONSE AFTER NON-FINAL ACTION | | | |
| 38 | 01/29/2009 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 37 | 01/29/2009 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 36 | 09/30/2008 | MAIL NON-FINAL REJECTION | | | |
| 35 | 09/26/2008 | NON-FINAL REJECTION | | | |
| 21 | 07/30/2008 | DATE FORWARDED TO EXAMINER | | | |

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|----|------------|---------------------------------------------------------|--|--|--|
| 20 | 06/27/2008 | RESPONSE TO ELECTION / RESTRICTION FILED | | | |
| 19 | 06/27/2008 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 18 | 07/17/2008 | CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA) | | | |
| 17 | 07/16/2008 | CORRESPONDENCE ADDRESS CHANGE | | | |
| 16 | 12/31/2007 | MAIL RESTRICTION REQUIREMENT | | | |
| 15 | 12/26/2007 | REQUIREMENT FOR RESTRICTION / ELECTION | | | |
| 13 | 10/24/2007 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 12 | 07/06/2007 | IFW TSS PROCESSING BY TECH CENTER COMPLETE | | | |
| 8 | 07/05/2007 | PG-PUB ISSUE NOTIFICATION | | | |
| 6 | 04/18/2007 | APPLICATION DISPATCHED FROM OIPE | | | |
| 5 | 06/24/2006 | 371 COMPLETION DATE | | | |
| 4 | 04/05/2007 | SENT TO CLASSIFICATION CONTRACTOR | | | |
| 3 | 04/05/2007 | NOTICE OF DO/EO ACCEPTANCE MAILED | | | |

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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